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October 14, 1994

Dr. Robert M. Pepper
Mr. Donald H. Gips
Office of Plans and Policy
Federal Communications Commission
1919 M Street, N.W., Room 822
Washington, D.C. 20554

DOCKET FILE COPY ORIGINAL

OCT 14 1994

Re: Ex Parte Letter
Cumulative Bidding Credit
Docket No. 93-253

Dear Dr. Pepper and Mr. Gips:

On August 15, 1994, the Federal Communications Commission (the "Commission") adopted competitive bidding rules for the auctioning of broadband Personal Communications Services ("PCS") radio spectrum. As part of its effort to create a bidding framework that would broadly disseminate PCS licenses, the Commission adopted a 15 percent bidding credit for women and minority-owned entities and a 25 percent bidding credit for small businesses owned by minorities and/or women.

BET Holdings, Inc. ("BHI") strongly opposes a cumulative bidding credit of 25 percent. The unequal treatment afforded minority and women-owned entities and "small" minority and women-owned entities is contrary to Congress' statutory mandate, unsupported by the record and will have the perverse effect of denying access to capital to successful minority and women-owned firms.

The record is replete with evidence that minorities and women suffer discriminatory treatment in capital markets, regardless of the size of their business. Marginally larger firms cannot be treated differently in the preferences afforded for their participation, consistent with the Commission's goals. Moreover, the 10 percent advantage plus installment payment benefits translate into many millions of dollars of equity provided by the Government in the auction process. The record does not support the Commission's conclusion that only small firms owned by women and minorities require an enhanced bidding credit.

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Moreover, pursuant to the Omnibus Budget Reconciliation Act, the Commission was directed to promote economic opportunity for a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by minority groups and women. There is no legislative predicate for limiting the availability of minority preferences according to a predetermined revenue cap.^{1/}

Finally, the Commission's cumulative 25 percent bidding credit to small minority and women-owned corporations unfairly disadvantages other women and minority-owned businesses. An investor seeking PCS opportunities is given an added incentive to partner with an inexperienced firm, with a 25 percent bidding credit, and is discouraged from concluding an agreement with a successful minority-owned entity afforded a bidding credit of only 15 percent.^{2/}

BHI urges the Commission to equalize the bidding credit afforded to all minority and women-owned entities. Providing different bidding credits to women and minority-owned companies,

^{1/} See e.g. House Report No. 103-111 at 255 ("the Commission should adopt regulations ... to ensure that businesses owned by members of minority groups and women are not in any way excluded from the competitive bidding process") (emphasis added).

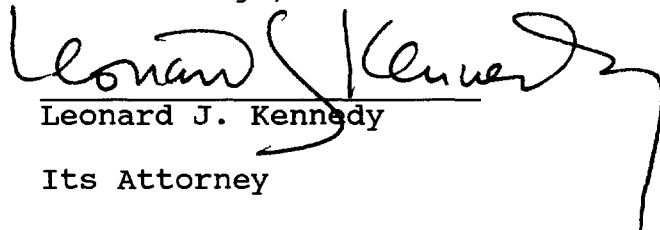
^{2/} The disparate bidding scheme promotes relationships between sophisticated communications investors and small partners with little more than their status as women and minorities to bring to the table.

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based on size, contravenes the purpose of the designated entity preferences and undermines any success of providing women and minorities long term, independent participation in the telecommunications industry.

Respectfully submitted,

BET Holdings, Inc.

A handwritten signature in black ink, appearing to read "Leonard J. Kennedy", is written over a horizontal line. The signature is stylized and extends to the right.

Leonard J. Kennedy

Its Attorney

CC: Chairman Reed E. Hundt
Commissioner James H. Quello
Commissioner Andrew C. Barrett
Commissioner Rachelle B. Chong
Commissioner Susan Ness